IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO. 243 OF 2007

Dr. Peter Fernandes,
S/o. Mariano Fernandes,
R/o. T-6 Daasha Classic,
Block-A, Quepem-Goa. .... Petitioner

V/s

1. S T A T E
Through the Public Prosecutor.

2. Police Inspector,
Quepem, Police Station. .... Respondents

Mr. Arun Bras De Sa, Advocate for the Appellant.
Ms. W. Coutinho, Public Prosecutor for the Respondents.

CORAM : N.A. BRITTO, J.

DATE : 2nd NOVEMBER, 2007

ORAL ORDER:

Heard Shri Arun Bras De Sa, the learned Counsel on behalf of the Petitioner and Ms. Coutinho, the learned Public Prosecutor on behalf of the Respondents.

2. The applicant herein is a homeopathic physician and there is no dispute about it. The gravamen of the charge against him is that he has been prescribing allopathic medicines. It appears that the applicant has a clinic in the name of "Humanitarian Services" situated at Quepem and he also represents that he is a homeopathic physician and Surgeon. Certain

Physicians practicing allopathic branch of medicine filed a complaint against him to the Goa Medical Council and who in turn filed a complaint dated 10/09/2007 against the applicant which has been registered as Crime No. 84/2007 under Section 27 of the Goa Medical Council (Amendment) Act, 2005 and Section 15(3) of the Indian Medical Council Act, 1956 and under Section 336, 416 r/w 419, 420 I.P.C.

3. Apprehending his arrest in the said crime, the applicant approached the Court of Sessions, Margao for anticipatory bail but his application came to be rejected by order dated 3/10/2007. In rejecting the application for anticipatory bail, the learned Sessions Judge noted, and in my view rightly, that Section 27 of the Goa Medical Council Act, 2005 was punishable with imprisonment of less than two years and therefore was bailable, as per Schedule II of the Code of Criminal Procedure, 1973. Likewise, Section 15(3) of the Indian Medical Council Act, 1956 was also bailable as it provided for punishment for a term which may extend to one year or with fine or with both. In other words, the learned Sessions Judge rightly noted that both the offences allegedly committed by the applicant were bailable. However, the learned Sessions Judge held that the offence under Section 420 I.P.C. was non-bailable as according to the learned Sessions Judge, the applicant being a homeopathic physician had no right to prescribe allopathic medicines which was apparent from the recovery made during the course of

investigations.

4. Counsel on behalf of the applicant submits that the case against the applicant came to be registered because of rivalry between the physicians practicing the allopathic system of medicines and the applicant who was practicing homeopathy. Learned Counsel further submits that the applicant has studied all the subjects which an allopathic physician also studies except Pharmacology and therefore was entitled to give injections as well.

5. On the other hand, learned Public Prosecutor submits that although custodial interrogation may not be insisted by the prosecution, the applicant be at least directed to report to the Police station for interrogation so as to find out about the type of medicines being prescribed by him.

6. As already stated the main charge against the applicant who is a homeopathic physician is that he has been prescribing medicines or drugs which only an allopathic Physician can prescribe. The learned Sessions Judge appears to have been impressed with the respondents' contention that the applicant was also representing that he was a Physician and Surgeon which he could not do. Prescribing allopathic medicines is one thing and suffixing physician and surgeon after his surname is quite another thing. The contention of the Respondent is that by suffixing his surname by Physician

and Surgeon he was misleading the patients and therefore amounted to cheating. If an allopathic physician graduates in both medicine and surgery (MBBS) so does a homeopathic physician (BHMS) as the degree conferred on the applicant clearly suggests. The approach to surgery may be different from the point of view of an allopathic physician than from a homeopathic physician. The former may require a scalpel to be used to deal with surgical problems and the latter may treat surgical problems with medicines alone. The applicant has passed his final year of BHMS which means nothing but a Bachelor of Homeopathic Medicine and Surgery from the Karnatak University and again the Goa Board of Indian System of Medicines and Homeopathy has recognised the applicant as a Doctor practicing in Homeopathic Medicine and Surgery and if that is so the applicant certainly was entitled to suffix his surname with Physician and Surgeon and thereby the applicant practiced no deception. One fails to understand as to how an offence of cheating was committed by him by representing that he was a homeopathic physician in medicine and surgery. In other words, if the offences were at all committed by him, the same were bailable and prima facie no offence of cheating was at all committed by the applicant and in such a situation, anticipatory bail could not have been denied to him.

7. Consequently, the applicant deserves to succeed. The offences allegedly committed by him being bailable, the applicant will be entitled to

be admitted to bail in the event of his arrest by the IO.

8. Application disposed off on the above terms.

9. Authenticated copy be expedited.

N.A. BRITTO, J.

NH/-